

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

11 WILLIAM ERRICO, an individual;  
12 LORETTA ANN ERRICO, an  
13 individual; WILLIAM ERRICO AND  
14 LORETTA ANN ERRICO, as Trustees  
of the William Errico and Loretta Ann  
Errico 1972 Trust, a California trust,

No. C-09-04072 LHK

**STIPULATED PROTECTIVE ORDER**

15 Plaintiffs,

16 v.

17 PACIFIC CAPITAL BANK, N.A., a  
18 national banking association, doing  
19 business as First National Bank of  
Central California; NIRAJ MAHARAJ,  
20 an individual; and DOES 1 through  
50, inclusive,

21 Defendants.

23 **1. PURPOSES AND LIMITATIONS**

24 Disclosure and discovery activity in this action are likely to involve production  
25 of confidential, proprietary, or private information for which special protection from public  
26 disclosure and from use for any purpose other than prosecuting this litigation may be  
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warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles. The parties further acknowledge, as set forth in Section 12.3, below, that this Stipulated Protective Order does not entitle them to file confidential information under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and the standards that will be applied when a party seeks permission from the court to file material under seal.

2. DEFINITIONS

2.1 Challenging Party: a Party or Non-Party that challenges the designation of information or items under this Order.

2.2 "CONFIDENTIAL" Information or Items: information (regardless of how it is generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of Civil Procedure 26(c).

2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as well as their support staff).

2.4 Designating Party: a Party or Non-Party that designates information or items that it produces in disclosures or in responses to discovery as "CONFIDENTIAL."

2.5 Disclosure or Discovery Material: all items or information, regardless of the medium or manner in which it is generated, stored, or maintained (including, among other things, testimony, transcripts, and tangible things), that are produced or generated in disclosures or responses to discovery in this matter.

1           2.6 Expert: a person with specialized knowledge or experience in a matter  
2 pertinent to the litigation who has been retained by a Party or its counsel to serve as an  
3 expert witness or as a consultant in this action.

4           2.7 House Counsel: attorneys who are employees of a party to this action.  
5 House Counsel does not include Outside Counsel of Record or any other outside  
6 counsel.

7           2.8 Non-Party: any natural person, partnership, corporation, association, or  
8 other legal entity not named as a Party to this action.

9           2.9 Outside Counsel of Record: attorneys who are not employees of a party  
10 to this action but are retained to represent or advise a party to this action and have  
11 appeared in this action on behalf of that party or are affiliated with a law firm which has  
12 appeared on behalf of that party.

13           2.10 Party: any party to this action, including all of its officers, directors,  
14 employees, consultants, retained experts, and Outside Counsel of Record (and their  
15 support staffs).

16           2.11 Producing Party: a Party or Non-Party that produces Disclosure or  
17 Discovery Material in this action.

18           2.12 Professional Vendors: persons or entities that provide litigation support  
19 services (e.g., photocopying, videotaping, translating, preparing exhibits or  
20 demonstrations, and organizing, storing, or retrieving data in any form or medium) and  
21 their employees and subcontractors.

22           2.13 Protected Material: any Disclosure or Discovery Material that is  
23 designated as "CONFIDENTIAL."

1           2.14 Receiving Party: a Party that receives Disclosure or Discovery Material  
2 from a Producing Party.

3           3. SCOPE

4           The protections conferred by this Stipulation and Order cover not only  
5 Protected Material (as defined above), but also (1) any information copied or extracted  
6 from Protected Material; (2) all copies, excerpts, summaries, or compilations of  
7 Protected Material; and (3) any testimony, conversations, or presentations by Parties or  
8 their Counsel that might reveal Protected Material. However, the protections conferred  
9 by this Stipulation and Order do not cover the following information: (a) any information  
10 that is in the public domain at the time of disclosure to a Receiving Party or becomes  
11 part of the public domain after its disclosure to a Receiving Party as a result of  
12 publication not involving a violation of this Order, including becoming part of the public  
13 record through trial or otherwise; and (b) any information known to the Receiving Party  
14 prior to the disclosure or obtained by the Receiving Party after the disclosure from a  
15 source who obtained the information lawfully and under no obligation of confidentiality to  
16 the Designating Party. Any use of Protected Material at trial shall be governed by a  
17 separate agreement or order.

18           4. DURATION

19           Even after final disposition of this litigation, the confidentiality obligations  
20 imposed by this Order shall remain in effect until a Designating Party agrees otherwise in  
21 writing or a court order otherwise directs. Final disposition shall be deemed to be the  
22 later of (1) dismissal of all claims and defenses in this action, with or without prejudice;  
23 and (2) final judgment herein after the completion and exhaustion of all appeals,  
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rehearings, remands, trials, or reviews of this action, including the time limits for filing any motions or applications for extension of time pursuant to applicable law.

**5. DESIGNATING PROTECTED MATERIAL**

### **5.1 Exercise of Restraint and Care in Designating Material for Protection.**

Each Party or Non-Party that designates information or items for protection under this Order must take care to limit any such designation to specific material that qualifies under the appropriate standards. The Designating Party must designate for protection only those parts of material, documents, items, or oral or written communications that qualify – so that other portions of the material, documents, items, or communications for which protection is not warranted are not swept unjustifiably within the ambit of this Order.

Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown to be clearly unjustified or that have been made for an improper purpose (e.g., to unnecessarily encumber or retard the case development process or to impose unnecessary expenses and burdens on other parties) expose the Designating Party to sanctions.

If it comes to a Designating Party's attention that information or items that it designated for protection do not qualify for protection, that Designating Party must promptly notify all other Parties that it is withdrawing the mistaken designation.

5.2 Manner and Timing of Designations. Except as otherwise provided in this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered, Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so designated before the material is disclosed or produced.

Designation in conformity with this Order requires:

1                     (a) for information in documentary form (e.g., paper or electronic  
2 documents, but excluding transcripts of depositions or other pretrial or trial proceedings),  
3 that the Producing Party affix the legend "CONFIDENTIAL" to each page that contains  
4 protected material. If only a portion or portions of the material on a page qualifies for  
5 protection, the Producing Party also must clearly identify the protected portion(s) (e.g.,  
6 by making appropriate markings in the margins).

7                     A Party or Non-Party that makes original documents or materials available for  
8 inspection need not designate them for protection until after the inspecting Party has  
9 indicated which material it would like copied and produced. During the inspection and  
10 before the designation, all of the material made available for inspection shall be deemed  
11 "CONFIDENTIAL." After the inspecting Party has identified the documents it wants  
12 copied and produced, the Producing Party must determine which documents, or portions  
13 thereof, qualify for protection under this Order. Then, before producing the specified  
14 documents, the Producing Party must affix the "CONFIDENTIAL" legend to each page  
15 that contains Protected Material. If only a portion or portions of the material on a page  
16 qualifies for protection, the Producing Party also must clearly identify the protected  
17 portion(s) (e.g., by making appropriate markings in the margins).

18                     (b) for testimony given in deposition or in other pretrial or trial proceedings,  
19 that the Designating Party identify on the record, before the close of the deposition,  
20 hearing, or other proceeding, all protected testimony.

21                     (c) for information produced in some form other than documentary and for  
22 any other tangible items, that the Producing Party affix in a prominent place on the  
23 exterior of the container or containers in which the information or item is stored the  
24 legend "CONFIDENTIAL." If only a portion or portions of the information or item warrant  
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1 protection, the Producing Party, to the extent practicable, shall identify the protected  
2 portion(s).

3       5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent  
4 failure to designate qualified information or items does not, standing alone, waive the  
5 Designating Party's right to secure protection under this Order for such material. Upon  
6 timely correction of a designation, the Receiving Party must make reasonable efforts to  
7 assure that the material is treated in accordance with the provisions of this Order.

8       6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

9       6.1 Timing of Challenges. Any Party or Non-Party may challenge a  
10 designation of confidentiality at any time. Unless a prompt challenge to a Designating  
11 Party's confidentiality designation is necessary to avoid foreseeable, substantial  
12 unfairness, unnecessary economic burdens, or a significant disruption or delay of the  
13 litigation, a Party does not waive its right to challenge a confidentiality designation by  
14 electing not to mount a challenge promptly after the original designation is disclosed.

15       6.2 Meet and Confer. The Challenging Party shall initiate the dispute  
16 resolution process by providing written notice of each designation it is challenging and  
17 describing the basis for each challenge. To avoid ambiguity as to whether a challenge  
18 has been made, the written notice must recite that the challenge to confidentiality is  
19 being made in accordance with this specific paragraph of the Protective Order. The  
20 parties shall attempt to resolve each challenge in good faith and must begin the process  
21 by conferring directly (in voice to voice dialogue; other forms of communication are not  
22 sufficient) within 14 days of the date of service of notice. In conferring, the Challenging  
23 Party must explain the basis for its belief that the confidentiality designation was not  
24 proper and must give the Designating Party an opportunity to review the designated  
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1 material, to reconsider the circumstances, and, if no change in designation is offered, to  
2 explain the basis for the chosen designation. A Challenging Party may proceed to the  
3 next stage of the challenge process only if it has engaged in this meet and confer  
4 process first or establishes that the Designating Party is unwilling to participate in the  
5 meet and confer process in a timely manner.

6         6.3 Judicial Intervention. If the Parties cannot resolve a challenge without  
7 court intervention, the Designating Party shall file and serve a motion to retain  
8 confidentiality under Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if  
9 applicable) within 21 days of the initial notice of challenge or within 14 days of the parties  
10 agreeing that the meet and confer process will not resolve their dispute, whichever is  
11 earlier. Each such motion must be accompanied by a competent declaration affirming  
12 that the movant has complied with the meet and confer requirements imposed in the  
13 preceding paragraph. Failure by the Designating Party to make such a motion including  
14 the required declaration within 21 days (or 14 days, if applicable) shall automatically  
15 waive the confidentiality designation for each challenged designation. In addition, the  
16 Challenging Party may file a motion challenging a confidentiality designation at any time  
17 if there is good cause for doing so, including a challenge to the designation of a  
18 deposition transcript or any portions thereof. Any motion brought pursuant to this  
19 provision must be accompanied by a competent declaration affirming that the movant  
20 has complied with the meet and confer requirements imposed by the preceding  
21 paragraph.

22         The burden of persuasion in any such challenge proceeding shall be on the  
23 Designating Party. Frivolous challenges, and those made for an improper purpose (e.g.,  
24 to harass or impose unnecessary expenses and burdens on other parties) may expose  
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1 the Challenging Party to sanctions. Unless the Designating Party has waived the  
2 confidentiality designation by failing to file a motion to retain confidentiality as described  
3 above, all parties shall continue to afford the material in question the level of protection  
4 to which it is entitled under the Producing Party's designation until the court rules on the  
5 challenge.

7. ACCESS TO AND USE OF PROTECTED MATERIAL

8       7.1 Basic Principles. A Receiving Party may use Protected Material that is  
9 disclosed or produced by another Party or by a Non-Party in connection with this case  
10 only for prosecuting, defending, or attempting to settle this litigation. Such Protected  
11 Material may be disclosed only to the categories of persons and under the conditions  
12 described in this Order. When the litigation has been terminated, a Receiving Party must  
13 comply with the provisions of section 13 below (FINAL DISPOSITION).

14 Protected Material must be stored and maintained by a Receiving Party at a location and  
15 in a secure manner that ensures that access is limited to the persons authorized under  
16 this Order.

17       7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise  
18 ordered by the court or permitted in writing by the Designating Party, a Receiving Party  
19 may disclose any information or item designated "CONFIDENTIAL" only to:

20           (a) the Receiving Party's Outside Counsel of Record in this action, as well  
21 as employees of said Outside Counsel of Record to whom it is reasonably necessary to  
22 disclose the information for this litigation and who have signed the "Acknowledgment  
23 and Agreement to Be Bound" that is attached hereto as Exhibit A;

(b) the officers, directors, and employees (including House Counsel) of the Receiving Party to whom disclosure is reasonably necessary for this litigation and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

(c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is reasonably necessary for this litigation and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

(d) the court and its personnel;

(e) court reporters and their staff, professional jury or trial consultants, mock jurors, and Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

(f) during their depositions, witnesses in the action to whom disclosure is reasonably necessary and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the court. Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material must be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Stipulated Protective Order.

(g) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information.

8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN  
OTHER LITIGATION

If a Party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this action as "CONFIDENTIAL," that Party must:

1                     (a) promptly notify in writing the Designating Party. Such notification shall  
2 include a copy of the subpoena or court order;

3                     (b) promptly notify in writing the party who caused the subpoena or order to  
4 issue in the other litigation that some or all of the material covered by the subpoena or  
5 order is subject to this Protective Order. Such notification shall include a copy of this  
6 Stipulated Protective Order; and

7                     (c) cooperate with respect to all reasonable procedures sought to be  
8 pursued by the Designating Party whose Protected Material may be affected.

9                     If the Designating Party timely seeks a protective order, the Party served with  
10 the subpoena or court order shall not produce any information designated in this action  
11 as "CONFIDENTIAL" before a determination by the court from which the subpoena or  
12 order issued, unless the Party has obtained the Designating Party's permission. The  
13 Designating Party shall bear the burden and expense of seeking protection in that court  
14 of its confidential material – and nothing in these provisions should be construed as  
15 authorizing or encouraging a Receiving Party in this action to disobey a lawful directive  
16 from another court.

17                     9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE PRODUCED  
18                     IN THIS LITIGATION

19                     (a) The terms of this Order are applicable to information produced by a  
20 Non-Party in this action and designated as "CONFIDENTIAL." Such information  
21 produced by Non-Parties in connection with this litigation is protected by the remedies  
22 and relief provided by this Order. Nothing in these provisions should be construed as  
23 prohibiting a Non-Party from seeking additional protections.

1                             (b) In the event that a Party is required, by a valid discovery request, to  
2 produce a Non-Party's confidential information in its possession, and the Party is subject  
3 to an agreement with the Non-Party not to produce the Non-Party's confidential  
4 information, then the Party shall:

5                             1. promptly notify in writing the Requesting Party and the Non-Party  
6 that some or all of the information requested is subject to a confidentiality agreement

7 with a Non-Party;

8                             2. promptly provide the Non-Party with a copy of the Stipulated  
9 Protective Order in this litigation, the relevant discovery request(s), and a reasonably  
10 specific description of the information requested; and

11                             3. make the information requested available for inspection by the  
12 Non-Party.

13                             (c) If the Non-Party fails to object or seek a protective order from this court  
14 within 14 days of receiving the notice and accompanying information, the Receiving  
15 Party may produce the Non-Party's confidential information responsive to the discovery  
16 request. If the Non-Party timely seeks a protective order, the Receiving Party shall not  
17 produce any information in its possession or control that is subject to the confidentiality  
18 agreement with the Non-Party before a determination by the court.<sup>1</sup> Absent a court order  
19 to the contrary, the Non-Party shall bear the burden and expense of seeking protection  
20 in this court of its Protected Material.<sup>1</sup>

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24                             <sup>1</sup> The purpose of this provision is to alert the interested parties to the existence of confidentiality  
25 rights of a Non-Party and to afford the Non-Party an opportunity to protect its confidentiality  
26 interests in this court.

1           10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

2           If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed  
3 Protected Material to any person or in any circumstance not authorized under this  
4 Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing  
5 the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve  
6 all unauthorized copies of the Protected Material, (c) inform the person or persons to  
7 whom unauthorized disclosures were made of all the terms of this Order, and (d) request  
8 such person or persons to execute the "Acknowledgment and Agreement to Be Bound"  
9 that is attached hereto as Exhibit A.

10           11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE  
12           PROTECTED MATERIAL

13           When a Producing Party gives notice to Receiving Parties that certain  
14 inadvertently produced material is subject to a claim of privilege or other protection, the  
15 obligations of the Receiving Parties are those set forth in Federal Rule of Civil Procedure  
16 26(b)(5)(B). This provision is not intended to modify whatever procedure may be  
17 established in an e-discovery order that provides for production without prior privilege  
18 review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the parties reach  
19 an agreement on the effect of disclosure of a communication or information covered by  
20 the attorney-client privilege or work product protection, the parties may incorporate their  
21 agreement in the stipulated protective order submitted to the court.

22           12. MISCELLANOUS

23           12.1 Right to Further Relief. Nothing in this Order abridges the right of any  
24 person to seek its modification by the court in the future.  
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1           12.2 Right to Assert Other Objections. By stipulating to the entry of this  
2 Protective Order no Party waives any right it otherwise would have to object to disclosing  
3 or producing any information or item on any ground not addressed in this Stipulated  
4 Protective Order. Similarly, no Party waives any right to object on any ground to use in  
5 evidence of any of the material covered by this Protective Order.

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7           12.3 Filing Protected Material. Without written permission from the  
8 Designating Party or a court order secured after appropriate notice to all interested  
9 persons, a Party may not file in the public record in this action any Protected Material. A  
10 Party that seeks to file under seal any Protected Material must comply with Civil Local  
11 Rule 79-5. Protected Material may only be filed under seal pursuant to a court order  
12 authorizing the sealing of the specific Protected Material at issue. Pursuant to Civil Local  
13 Rule 79-5, a sealing order will issue only upon a request establishing that the Protected  
14 Material at issue is privileged, protectable as a trade secret, or otherwise entitled to  
15 protection under the law. If a Receiving Party's request to file Protected Material under  
16 seal pursuant to Civil Local Rule 79-5(d) is denied by the court, then the Receiving Party  
17 may file the information in the public record pursuant to Civil Local Rule 79-5(e) unless  
18 otherwise instructed by the court.  
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21           13. FINAL DISPOSITION. Within 60 days after the final disposition of this action,  
22 as defined in paragraph 4, each Receiving Party must return all Protected Material to the  
23 Producing Party or destroy such material. As used in this subdivision, "all Protected  
24 Material" includes all copies, abstracts, compilations, summaries, and any other format  
25 reproducing or capturing any of the Protected Material. Whether the Protected Material is  
26 returned or destroyed, the Receiving Party must submit a written certification to the  
27 Producing Party (and, if not the same person or entity, to the Designating Party) by the  
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1 60 day deadline that (1) identifies (by category, where appropriate) all the Protected  
2 Material that was returned or destroyed and (2) affirms that the Receiving Party has not  
3 retained any copies, abstracts, compilations, summaries or any other format reproducing  
4 or capturing any of the Protected Material. Notwithstanding this provision, Counsel are  
5 entitled to retain an archival copy of all pleadings, motion papers, trial, deposition, and  
6 hearing transcripts, legal memoranda, correspondence, deposition and trial exhibits,  
7 expert reports, attorney work product, and consultant and expert work product, even if  
8 such materials contain Protected Material. Any such archival copies that contain or  
9 constitute Protected Material remain subject to this Protective Order as set forth in  
10 Section 4 (DURATION).

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14 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

15 DATED: 2/24/11

*Dawn L. Sherk*

16 Attorneys for Plaintiff

17 DATED: 2/24/11

*Laura J. Palomino*

18 Attorneys for Defendants

20 PURSUANT TO STIPULATION, IT IS SO ORDERED.

21 DATED: March 1, 2011

*Paul S. Grewal*

22 [Name of Judge] Paul S. Grewal  
23 United States |XXXXX/Magistrate Judge

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